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Eastern District of New York*

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F.#2010R00420

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January 20, 2012

Hon. Frederic Block  
United States District Court  
Brooklyn Federal Courthouse  
225 Cadman Plaza, East  
Brooklyn, New York 11201

Re: United States v. Pedro Espada, Jr., et al.  
Criminal Docket No. 10-985 (S-2)(FB)

Dear Judge Block:

The government writes to inform the Court and defense counsel of a problem regarding our Office's effort to prevent the government's trial team from being exposed to materials potentially covered by the attorney-client privilege and attorney work product protection (collectively "protected material").

By way of background, when agents executed a search warrant at Soundview Healthcare Center, the defendants' non-profit organization, they recovered electronic data from several computers and servers (the "Seized Computer Data"). The government undertook extensive measures to ensure that the prosecutors, support staff and law enforcement agents prosecuting the case (the "Trial Team") did not review or have access to protected material, including documents within the Seized Computer Data. These measures included, but were not limited to, the following: (a) not searching the office or computer of Soundview's in-house attorney to avoid obtaining protected material in the first place; (b) establishing a formal "Taint Team" following the search, comprised of attorneys, agents and support staff who were independent of the Trial Team and would not perform work relating to prosecution of the case other than identifying and filtering protected material; (c) having the Taint Team review the Seized Computer Data to identify protected material, and take steps to prevent the Trial Team's exposure to them; (d) having the Taint Team run targeted searches to identify attorneys' names, firms or email addresses in the Seized Computer Data to identify protected material; and (e) having the Taint Team take numerous steps, over the course of several months, designed to create a "clean" version of the Seized Computer Data, i.e., a version purged of protected material (the "Filtered Computer Data") for the Trial Team to access.

In the past few days, prosecutors on the Trial Team came across a potentially privileged document while searching the Filtered Computer Data. This discovery caused the Trial Team to alert the Taint Team, which initiated a review of the Filtered Computer Data. Thus far, the Taint Team has determined that the problem goes beyond the document that the Trial Team found, which the Taint Team had previously designated as protected material.

